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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,752	01/16/2002	John D. Puskas	16294-0134 (45044-269130)	7521
7590 07/07/2005			EXAMINER	
JAMES G. TAUSCHE 5231 POWERS FERRY ROAD ALANTA, GA 30327			LAYNO, CARL HERNANDZ	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/051,752	Applicant(s) PUSKAS, JOHN D.	
	Examiner <i>Carl H. Layno</i> Carl H. Layno 7/5/05	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 April 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-120 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-24 and 49-120 is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7-11,25-28 and 37-40 is/are rejected.
- 7) ☒ Claim(s) 2,5,6,12,29-36 and 41-48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/26/04, 3/4/05</u> | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's amendment and 3-month extension of time, which were received by the Office on April 4, 2005.

2. Claims 1-120 are pending and active.

#### ***Information Disclosure Statement***

3. Acknowledgment is made of applicant's Information Disclosure Statements (PTO-1449) which were received by the Office on November 26, 2004 and on March 4, 2005.

#### ***Drawings***

4. The corrected formal drawings for Figs.4-13 were received on April 4, 2005. These drawings are approved by the Examiner.

#### ***Claim Objections***

5. In view of the applicant's numerous corrections to the claims, the Examiner is withdrawing the objections which were made against claims 51-57, 77, and 78 in the last Office action.

#### ***Claim Rejections - 35 USC § 112***

Art Unit: 3762

6. In view of applicant's modifications to claim 24, the Examiner is withdrawing the 35 U.S.C 112 rejection, which was made against this claim in the last Office action.

***Claim Rejections - 35 USC § 102***

**Wernicke et al '480**

7. Claims 1, 3, 4, and 7-11 are still rejected under 35 U.S.C. 102(b) as being anticipated by Wernicke et al '480.

Although applicant's arguments with regard to electrodes **12-1** and **12-2** of Wernicke et al '480 were considered valid (i.e. the electrodes residing outside rather than within the esophagus), the Examiner believes the 35 U.S.C 102 (b) rejection is still valid with respect to claims 1, 3, 4, for the case of stimulation electrodes **40-1** and **40-2** which are located within the esophagus **14** of the patient and connected to the vagus nerve **44**. See Figs.3 and 4. In regards to claims 3 and 4, electrodes **40-1** and **40-2** operate as bipolar stimulation electrodes (col.9, lines 17-18). For details regarding claims 7-11, applicant's attention is directed to paragraph 7 of the last office action.

**Loos '874**

8. Applicant's arguments, see amendment, filed April 4, 2005, with respect to the rejection(s) of claim(s) 37-40, 47, and 48 under Loos '874 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Adams '187.

**Adams '187**

9. Claims 25-28 and 37-40 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Adams '187.

The Adams '187 patent describes a neuro-stimulation device for controlling pain during defibrillation. Various embodiments of this device include a stimulator **34** (Fig. 1) connected via catheters **40,42** to two stimulating electrodes **36,38**, for stimulating the vagus nerves **16,12**, respectively. Since each electrode stimulates a different area, and no additional electrodes are present, it would be obvious if not inherent to presume the stimulation pulses are unipolar.

In regard to claim 25, stimulating electrodes **36** and **38** are located within the right internal jugular vein **18** and left internal jugular vein **14** proximate the right and left vagus nerves, **16** and **12**, respectively (col.4, lines 63 thru col.5, line 5).

In regard to claim 37, another embodiment, shown in Fig.2, describes an external pulse generator **60**, having wires **62** and **64** for connecting to two patch electrodes **66** and **68**, placed upon a patient's neck for indirectly stimulating nearby vagus nerves **16** and **12**, respectively, to relieve pain (col.5, lines 34-43).

***Allowable Subject Matter***

10. Claims 2, 5, 6, 12, 29-36, and 41-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

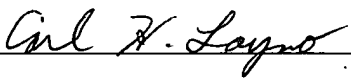
11. Claims 13-24 and 49-120 are allowed.

*Conclusion*

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on Monday thru Thursday from 9 AM to 6 PM and every other Friday between 9AM and 5PM. A voice mail or E-mail message ([carl.layno@uspto.gov](mailto:carl.layno@uspto.gov)) may be left if desired.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes, can be reached on (571) 272-4955. All faxed communications should be sent to the Office's Official FAX number (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Legal Instruments Examiner (LIE) Brenda Webb whose telephone number is (571) 272-4399.

  
\_\_\_\_\_  
CARL LAYNO  
PRIMARY EXAMINER

CHL  
7/5/2005